

0.082, 0.005

[REDACTED], all of which are for-profit entities, according to a letter dated January 14, 1997 and signed by [REDACTED]. It is unknown whether the organizations share officers but the proposed exempt organization shares employees with the for profits and pays for their time per the application Form 1023 and attachment #1.

ISSUE:

Does the applicant organization qualify for exemption from Federal income tax as an organization described in IRC 501(c)(3)? Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(6) of the Code?

LAW:

Section 501(c)(3) of the Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

..."(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statement), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations (Reg.) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the Reg. defines "Private shareholders or individuals" as an individual having a personal and private interest in the activities of the organization.

Human Engineering Institute, TC Memo 1978-145, affd (1980, CA6) 629 F2d 1160, 80-2 USTC section 9600, 46 AFTR 2d 80-5479; Kenner, Williams v. Comm., (1963 CA7) 318 F2d 632 63-2 USTC section 9519, 11 AFTR 2d 1596; and Gondia Corp, TC Memo 1982-422 all affirm that an organization is not organized and operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part for the benefit of private shareholders or individuals.

In Puritan Church of America v. Comm., (1953, Dist Col) 209 F2d 306, 53-2 USTC section 9601, 45 AFTR 119 cert den (1954) 347 US 975, 98L ED 1115, the court found that an organization is disqualified if it serves a private rather than a public interest. It must therefore, establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator of the organization or his family, shareholders, or persons controlled

(directly or indirectly) by such private interests, and the accomplishment of the exempt purpose must not be accompanied by personal, private or selfish considerations.

In American Campaign Academy, (1989) 92 TC 1053 the court also found that non-incidental benefits conferred on disinterested persons may also serve private and non-public interests and unrelated third parties (i.e., those not within the scope of private shareholders or individuals but not merely members of the general public) aren't excluded from the class of private persons whose receipt of benefit would cause an organization to be operated for non-exempt purposes.

Revenue Ruling 69-175 denied exemption to a non-profit organization formed by parents of pupils attending a private school that provides bus transportation for its members' children. It serves a private rather than a public interest and does not qualify for exemption under IRC 501(c)(3).

Section 501(c)(6) of the Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

..."(6) Business leagues, chamber of commerce, real estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 1.501(c)(6)-1 of the Reg. provides in part, as follows:

"A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest. It is an organization of the same general class as a chamber of commerce or board of trade."

Thus its activities should be directed to the improvement of business conditions of one or more lines of businesses as distinguished from the performance of particular services for individual persons.

In National Prime Users Group, Inc., vs U.S., the court found that a corporation originally organized to facilitate communication among users of one manufacturer's computer equipment did not satisfy the "line of business" requirement and was not a tax exempt business league.

Revenue Ruling 67-77 denied exemption to an organization of dealers marketing a single brand of automobile.

Revenue Ruling 73-411 states that a merchants' association whose activities are directed to promoting the general business interest of its members does not qualify for exemption under code section 501(c)(6).

Revenue Ruling 74-116 discussed a non-profit organization of computer users whose activities are designed to keep members informed of current scientific and technical data of special interest to them as users of the computer. This organization was not exempt under

section 501(c)(3). The same principle holds true for section 501(c)(6) organizations. Private interest would be served rather than directing activities to the improvement of business conditions.

ANALYSIS:

All of the above Code sections, Regulation sections, Revenue Rulings and Court cases describe the criteria under which an organization may be exempt under sections 501(c)(3) and 501(c)(6) of the Code. They also describe the basis for which organizations were denied exemption because of private benefit to either members or third parties and inurement to insiders.

In order to qualify for tax exempt status under IRC 501(c)(6) as a business league, an organization's activities must be directed towards the improvement of business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons.

The primary activity of your organization, [REDACTED], is to sell home check programs to the homeowners including the utilization of the [REDACTED]. Your activity constitutes the performance of particular services for the creator, [REDACTED], by promoting its business interest, and is not an activity toward the improvement of business conditions as a whole of one or more lines of business.

In order to qualify under section 501(c)(3), an organization must be organized and operated exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational or operational test, it is not exempt, per Treasury Regulations section 1.501(c)(3)-1(a)(1). To meet the operational test, the organization must engage in activities furthering "public purposes" rather than "private interests." It must not be operated for the benefit of designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly by such private interests.

The primary activity of your organization, created by [REDACTED], is to sell home check programs to the homeowners including the utilization of the [REDACTED]. Your activities are promoting the business interests of the creator, [REDACTED] and are not furthering public benefit.

CONCLUSION:

It is the position of the Internal Revenue Service that your organization does not qualify for exemption from Federal income tax under section 501(c)(3) or section 501(c)(6) of the Internal Revenue Code. Accordingly, you are required to file income tax returns on Form 1120 annually with your District Director.

If you are in agreement with this determination, we request that you sign and return the enclosed agreement Forms 6018.

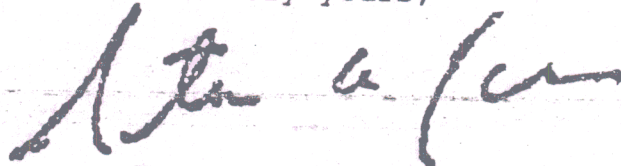
If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals, your request for a hearing should include a written appeal giving the fact, law and any other information to

support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of the Regional Director of Appeals, or if you request, a mutually convenient District Office.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any questions, please contact the person whose name and telephone number are shown in heading of this letter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Steven A. Jensen", written over a horizontal line.

Steven A. Jensen
District Director

Enclosures: Forms 6018
Publication 892